

TECH

Case on Health Risk From Cellphones Is Back in Court

Murray v. Motorola faces another test Tuesday when the two sides argue over what legal standard to use

Motorola is a defendant in a lawsuit that alleges that one of its employees may have suffered from health issues as a result of cellphone use. Other cellphone and wireless companies face similar allegations in more than two dozen such cases.

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By **RYAN KNUTSON**

Nov. 22, 2015 6:32 p.m. ET

Alicia Mitchell was 15 years old when her father sued Motorola Inc., alleging the company's cellphones caused his brain tumor. She'll turn 30 in February and the lawsuit is still winding its way through court.

In the years since the lawsuit was filed, other plaintiffs have brought more than two dozen similar cases, the most recent one in October. Defendants include almost all the major cellphone and wireless companies, including AT&T Inc., Verizon Communications Inc., Apple Inc. and Samsung Electronics Co.

Representatives for Motorola and the other defendants referred questions to the CTIA, the wireless industry trade group, which said in a statement that "peer-reviewed scientific evidence has overwhelmingly indicated that wireless devices do not pose a public health risk for adults or children."

So far, the cases have mostly been a battle over legal procedure, not science. Ms. Mitchell's father's lawsuit, Murray v. Motorola, faces another test Tuesday when the sides argue over what legal standard should be applied when evaluating evidence brought by scientists.

The case is being closely watched, as it would have ramifications not only for what

evidence could be admitted in other cellphone cases, but it could also set a new precedent in the Superior Court of the District of Columbia. Ms. Mitchell's father, Michael Murray, was diagnosed with a brain tumor in 1999, after spending several years working at Motorola as a handset technician. He and his wife sued Motorola in 2001. He died in 2003.

Jeffrey Morganroth, a lawyer representing the Murrays, has brought several other cases against Motorola and other defendants. A total of 13 cases have been consolidated into the Murray case, and the plaintiffs are seeking more than \$1.9 billion in damages combined.

In filings with the Securities and Exchange Commission, cellphone manufacturers and wireless carriers specifically acknowledge the risk posed by health-related lawsuits. "We may incur significant expenses in defending these lawsuits," Verizon wrote in its 2015 annual filing. "In addition, we may be required to pay significant awards or settlements."

Through the years, the Murray case has withstood several motions to dismiss and an effort to transfer it to federal court. In August 2014, Judge Frederick H. Weisberg of the Superior Court of the District of Columbia ruled that testimony from five scientists could be admitted to the trial.

The defendants appealed, arguing the court should have used a different legal standard, known as Daubert, when deciding whether to admit the testimony from scientists. Judge Weisberg relied on a evidentiary standard known as Frye. On Tuesday, a panel of judges at the District of Columbia Court of Appeals is expected to hear oral arguments on the matter. Under the Frye standard, the court may only look at the methodology researchers use to determine whether their testimony can be admitted. Under the Daubert standard, judges have more discretion to consider other factors.

"This is a marathon," said Mr. Morganroth, the lawyer for the Murrays. Eight of the plaintiffs in other cases have died while the lawsuits have been pending, he said. A decision in favor of Motorola and the other defendants, which are pushing for the Daubert standard, would send ripples beyond the Murray lawsuit. Seventeen of the other cellphone-health cases are stayed pending a ruling in this case.

Judge Weisberg wrote in his August 2014 decision that testimony from the scientists he found admissible under Frye would "almost certainly be excluded under Daubert."

“The consensus throughout the scientific community is that the present state of science does not permit any definitive answer to the question of whether cellphone, [radio-frequency] radiation causes cancer or any other adverse health effects,” Judge Weisberg wrote in that decision.

If the plaintiffs prevail, discovery will begin on the broad issue of whether cellphones can cause brain tumors, specifically, glioma and acoustic neuroma. In addition, the plaintiffs would need to prove cellphones caused the cancer in their specific cases.

U.S. government agencies, such as the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Federal Communications Commission, all say there is no conclusive evidence that cellphones cause cancer, or any other harmful effects. The agencies say further research is needed. In 2013, the FCC began reviewing whether cellphone safety standards, first designed in the 1990s, are still adequate. It has yet to reach a conclusion.

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